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HA HOW PING v. TIMBALAN MENTERI DALAM NEGERI, MALAYSIA & ORS

HIGH COURT MALAYA, JOHOR BAHRU
COLLIN LAWRENCE SEQUERAH J
[CRIMINAL APPLICATION NO: 44-09-02-2017]
B 31 OCTOBER 2017

CRIMINAL PROCEDURE: *Habeas corpus – Application for – Writ of habeas corpus against legality of detention order – Applicant requested to leave hearing of representation – Whether applicant prejudiced – Allegation that contents of* C *detention order, statement of fact and Form I not explained to applicant in his mother tongue – Failure of prosecution to supply applicant's recorded statement – Whether applicant accorded fair and effective representation – Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 3(1), 6(1) & 9(1), (2)(b)(iii) – Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987, r. 3(1)*

D

The applicant was arrested under s. 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act'). The police officer submitted a report on the circumstances surrounding the arrest of the applicant to the first respondent ('the Deputy Minister') in order to comply with the condition requiring the police to conduct investigations beyond 14 days. The E investigation officer ('the IO') recorded a statement from the applicant and submitted a complete report of the same to the Deputy Minister and the Inquiry Officer of the Home Ministry. The inquiry officer conducted a physical investigation on the applicant and submitted a report to the Deputy Minister. After examining the report, the Deputy Minister issued a detention F order ('the DO') pursuant to s. 6(1) of the Act for a period of two years with immediate effect. The DO, grounds for the DO, statement of facts and three copies of the Form for Making Representations ('Borang I') were served and explained by the IO through an interpreter, ASP Jodie ('ASP Jodie') to the applicant. The applicant was brought to the Pusat Permulihan Akhlak G Simpang Renggam, Johor ('the Centre') and was informed and explained about the DO, grounds for the DO, statement of facts and his right to make representations by the Head of Prisons, which was interpreted to the applicant by one Zulkarnain. The applicant proceeded to submit Borang I to the Centre which was then served on the Advisory Board ('the Board') on the same date. After two postponements, the Board heard the applicant's H representation and the proceedings were interpreted to the applicant in Mandarin. The Board presented a recommendation to the Yang di-Pertuan Agong ('the YDPA') concerning the representations made by the applicant pursuant to s. 10(1) of the Act and after considering the said recommendations, the YDPA consented to the DO made by the Deputy I Minister. In the present application, the applicant sought a writ of *habeas corpus* against the legality of the DO on the grounds that (i) he was denied a fair and effective representation as he was requested to leave the hearing of the representation; (ii) the contents of the DO, the statement of facts and

Borang I were not explained to him in Mandarin or the Foo Chow dialect and this was an infringement of s. 9(1) of the Act and r. 3(1) of the Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987 ('the Rules'); and (iii) there was a failure to supply the recorded statement of the applicant under s. 9(2)(b)(iii) of the Act.

Held (dismissing application):

(1) The reason the applicant was requested to leave the meeting room was sufficiently explained in the affidavit of the Secretary to the Advisory Board ('the secretary'). The secretary stated that after the applicant orally submitted their representations, the Board instructed that a police officer present the facts of the case which involved making reference to several written statements of certain witnesses. The affidavit also contained a statement that the Board felt that allowing the applicant to remain would have prejudiced national security. The Board also took into account the safety aspects of the witnesses and the informants. The Board took the view that there would be no prejudice to the applicant's rights in requesting that the applicant and his counsel leave because they were requested to leave after being afforded the opportunity to submit their representations. (paras 30-33)

(2) The issue of whether or not a matter is subject to national security is best left to the subjective discretion of the authority claiming such protection. The very wordings of s. 14 of the Act and art. 151(3) of the Federal Constitution itself import a subjective element of the deciding authority in deciding such matters. Furthermore, the applicant, who was represented by not one but two able counsel, had been given ample opportunity and latitude to submit orally when making representations. The applicant was also allowed the further latitude by the Board of calling the IO as a witness during the hearing of the representation. There was no merit in the applicant's complaint in respect of the ground that he was denied a fair and effective representation (paras 42-46)

(3) According to the IO, she had served the DO, the statement of facts and Borang I on the applicant and ascertained that the applicant required a Mandarin interpreter. The affidavit of ASP Jodie explained in detail that the interpretation was carried out in Mandarin and the applicant then, without any form of duress or coercion, placed his signature acknowledging his receipt and understanding of the contents of the order, the statement of facts, grounds and Borang I. The statements of both the IO and ASP Jodie were supported by the affidavit of the Head of Prisons. There was no breach of s. 9(1) of the Act and the Rules. (paras 56-58, 60 & 62)

(4) The affidavit of the Head of Prisons was an annexure to Borang I and it contained a note in the applicant's own handwriting containing his representation as 'Saya tak mengakui dan dibebaskan atau dikenakan sekatan daerah (P.C.O). Sekian terima kasih'. This amply proved that

A the applicant was well conversant with the Bahasa Malaysia language and could understand and write in Bahasa Malaysia. Furthermore, he was born in 1974 and therefore belonged to the generation who most likely received their medium of instruction while in school in the national language. (paras 65 & 66)

B **(5)** Section 14 of the Act and art. 151(3) of the Federal Constitution grant the respondent the right to claim immunity from disclosing documents which in their opinion or that of the Minister is against the national interest. The refusal to furnish the said statement did not prejudice the right of the applicant to make representations pursuant to the said Act.
C There were several documents which must be furnished and the statement of the applicant not being one of those documents particularised or made mandatory for that purpose, could not have a determining effect upon the effectiveness of the representations. (paras 72, 74 & 75)

D **Case(s) referred to:**

Abdul Razak Baharudin & Ors v. Ketua Polis Negara & Ors and Another Appeal [2005] 4 CLJ 445 FC ***(refd)***

Lee Kew Sang v. Timbalan Menteri Dalam Negeri, Malaysia & Ors [2005] 3 CLJ 914 FC ***(refd)***

E *Mohd Faizal Haris v. Timbalan Menteri Dalam Negeri Malaysia & Ors [2005] 4 CLJ 613 FC* ***(refd)***

PP v. Karpal Singh Ram Singh & Another Case [1988] 2 CLJ 587; [1988] 1 CLJ (Rep) 249 SC ***(refd)***

Legislation referred to:

F Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 3(1), (2)(c), (3), 5(4), 6(1), 9(2)(b)(iii), 10(1), 11C, 14

Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987, rr. 3(1), (3), 10

Federal Constitution, art. 151(1)(a), (3)

For the applicant - KL Chee & Naizatul Zamrina Karizaman; M/s KL Chee & Co

G *For the respondents - Lim Wai Yi & Shahidah Nafisah; DPPs*

Reported by Najib Tamby

JUDGMENT

H **Collin Lawrence Sequerah J:**

Introduction

[1] This is an application by the applicant for a writ of *habeas corpus* against the legality of a detention order dated 24 June 2016 made by the
I Deputy Home Minister ("Minister") under s. 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ("the Act") ordering the applicant to be detained for a period of two years at the Pusat Permulihan Simpang Renggam, Johor ("the Centre") commencing from 24 June 2016.

Salient Facts

[2] The applicant was arrested under s. 3(1) of the Act on 18 May 2016. Investigations commenced soon thereafter after which Deputy Superintendent of Police (DSP) Mohd Husni bin Manaf reported to Dato Pahlawan Mohd Dzuraidi bin Ibrahim that the investigation against the applicant could not be completed within a period of 14 days.

[3] On 30 May 2016, the said Dato Pahlawan Mohd Dzuraidi bin Ibrahim being the designated officer by the Inspector General of Police (IGP) under s. 3(2)(c) of the Act submitted a report on the circumstances surrounding the arrest of the applicant to the Deputy Minister of Home Affairs ("Deputy Minister") in order to comply with the condition requiring the police to conduct investigations beyond 14 days.

[4] On 30 May 2016, police investigation officer ("IO") Syazana Syarliza binti Abdul Ghani recorded a statement from the applicant. On 16 June 2016, the said IO submitted a complete report on the investigations to the Deputy Minister and the inquiry officer of the Home Ministry pursuant to s. 3(3) of the Act.

[5] On 22 June 2016, the inquiry officer Dzul Iswari bin Mohd Jaafar conducted a physical investigation on the applicant. On 23 June 2016, the said inquiry officer submitted a report to the Deputy Minister pursuant to s. 5(4) of the Act.

[6] After examining the report, the Deputy Minister issued the detention order ("DO") dated 24 June 2016 pursuant to s. 6(1) of the Act for a period of two years with immediate effect, ie, 24 June 2016.

[7] The DO, grounds for the DO, statement of facts and three copies of the form for making representations ("Borang I") were served and explained by the said Syazana Syarliza binti Abdul Ghani through an interpreter, namely, Assistant Superintendent of Police (ASP) Jodie Yap Siew Wen to the applicant on 24 June 2016 at 6pm at the Central Police Lockup in Shah Alam, Selangor.

[8] On 25 June 2016, the applicant was brought to the Correctional Centre or the (Pusat Permulihan Akhlak) Simpang Renggam, Johor (Centre). The applicant was informed and explained about the DO, grounds for the DO, statement of facts and his right to make representations by Azman bin Mohd Ali, the head of prisons (penguasa penjara). All of this was interpreted to the applicant by Zulkarnain bin Mohammad on the same date.

[9] On 26 June 2016, the applicant submitted the Borang I to the Centre at Simpang Renggam which was then served on the Advisory Board (Board) on the same date.

[10] On 21 July 2016, the Board sent a notice of hearing of representation (Borang II) which was fixed on 26 July 2016 on the applicant. The said hearing was however postponed on the application of the applicant on grounds that his lawyer was not present.

[11] On 26 July 2016, the Board sent another notice of hearing of representation (Borang II) fixed for hearing on 9 August 2016 to the applicant. The hearing was however again postponed because the applicant's counsel requested for adjournment as he intended to employ the services of a Vietnamese interpreter and to call witnesses.

[12] On 9 August 2016, the Board sent yet another notice of hearing of representation (Borang II) fixed for hearing on 24 August 2016 on the applicant. On 24 August 2016, the Board sat to hear the representation of the applicant at the Centre in Simpang Renggam, Johor. During the said representation, the applicant attended and was represented by his counsel. The proceedings were interpreted to the applicant by Corporal Tee Tian Lai in the Mandarin dialect.

[13] On 6 September 2016, the Board presented a recommendation to the Yang di-Pertuan Agong ("the King") concerning the representations made by the applicant pursuant to s. 10(1) of the Act and after considering the said recommendations, the King consented ("memperkenankan") to the DO made by the Deputy Minister on 19 September 2016.

Parties Submissions

[14] The applicant raised four grounds of challenge to the detention order ("order"). The first was that he was denied a fair and effective representation. The reason advanced for this ground was that he and his counsel were requested to leave during the hearing of the representations.

[15] They argued therefore that they were denied the opportunity to hear the submission of the officers conducting the representation and did not have the right to reply to those submissions. It was accordingly submitted that there was an infringement of art. 151(1)(a) of the Federal Constitution.

[16] The respondents on the other hand, claimed the right to have the proceedings held in the absence of the applicant and his counsel on the grounds of threat to national security and cited the provisions of s. 14 of the Act and art. 151(3) of the Federal Constitution in support.

[17] The second and third grounds raised by the applicant which can be conveniently dealt with together was that the contents of the detention order ("order"), the statement of facts and the Borang I relating to representation were not explained to him in Mandarin or in the Foo Chow dialect.

[18] It is the applicant's contention that if he had understood the contents if they had been interpreted to him as it should, he would not have written the words "tidak faham" or that he did not understand in Chinese characters at the portion where he placed his signature on the order.

[19] The applicant submitted that this was confirmed by a Chinese court interpreter in relation to the Borang I. A

[20] The applicant also alleged that the NRIC number in the Borang I was not his although the name was the same.

[21] He, therefore, alleged infringement of s. 9 of the Act and r. 3(1) of the Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987 respectively. B

[22] The third and final ground raised was a breach of s. 9(2)(b)(iii) of the Act due to the failure to supply the applicant's recorded statement to him.

[23] The respondents took the stand that the decision to refuse the furnishing of the said statement was justified because the document was a confidential document as well as one which disclosure would be against the national interest according to s. 14 of the Act. The respondents also submitted that the refusal to furnish the said statement did not prejudice the right of the applicant to make representations pursuant to the said Act. C D

The Law Relating To *Habeas Corpus* Applications

[24] The powers of the court when hearing an application for *habeas corpus* is circumscribed by s. 11C of the Dangerous Drugs (Special Preventive Measures) Act 1985 [Act 316] which insofar as is relevant reads as follows: E

> 11C. Judicial review of act or decision of Yang di-Pertuan Agong and Minister
>
> (1) There shall be no judicial review in any court of, and no court shall have or exercise any jurisdiction in respect of, any act done or decision made by the Yang di-Pertuan Agong or the Minister in the exercise of their discretionary power in accordance with this Act, save in regard to any question on compliance with any procedural requirement in this Act governing such act or decision. F

[25] What constitutes "judicial review" is defined hereunder: G

> 11D. Interpretation of "judicial review"
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> In this Act, "judicial review" includes proceedings instituted by way of:
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> (a) an application for any of the prerogative orders of *mandamus*, prohibition and *certiorari*;
>
> (b) an application for a declaration or an injunction; H
>
> (c) a writ of *habeas corpus*; and
>
> (d) any other suit, action or other legal proceedings relating to or arising out of any act done or decision made by the Yang di-Pertuan Agong or the Minister in accordance with this Act. I

[26] In *Lee Kew Sang v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2005] 3 CLJ 914; [2005] 2 MLJ 631, it was held:

> In our view, courts must give effect to the amendments. That being the law, it is the duty of the courts to apply them. So, in a *habeas corpus* application where the detention order of the Minister made under s. 4(1) of the Ordinance or, for that matter, the equivalent sections in ISA 1960 and DD(SPM) Act 1985, *the first thing that the courts should do is to see whether the ground forwarded is one that falls within the meaning of procedural non-compliance or not. To determine the question, the courts should look at the provisions of the law or the rules that lay down the procedural requirements*. It is not for the courts to create procedural requirements because it is not the function of the courts to make law or rules. *If there is no such procedural requirement then there cannot be non-compliance thereof. Only if there is that there can be non-compliance thereof and only then that the courts should consider whether, on the facts, there has been non-compliance*.
>
> (emphasis added)

[27] This decision was followed in *Abdul Razak Baharudin & Ors v. Ketua Polis Negara & Ors and Another Appeal* [2005] 4 CLJ 445; [2006] 1 MLJ 320.

[28] The parameters of the court in applications of this nature were also set out in *Mohd Faizal Haris v. Timbalan Menteri Dalam Negeri Malaysia & Ors* [2005] 4 CLJ 613; [2006] 1 MLJ 309, as follows:

> *The general rule that a writ of habeas corpus must be directed against the current order of detention therefore applies where a detention under s. 6(1) has been made subsequent to an arrest and detention under s. 3(1) and (2). It follows that where a detention order has been made under s. 6(1) the writ of habeas corpus must be directed only against that order even if the earlier arrest and detention are irregular*. This view is supported by *Barnardo v. Ford* [1892] AC 326 where Lord Halsbury said that he could not agree to the proposition that if a court is satisfied that illegal detention has ceased before application for the writ has been made, nevertheless the writ might issue in order to vindicate the authority of the court against a person who has once, though not at the time of the issue of the writ, unlawfully detained another or wrongfully parted with the custody of another. Thus any irregularity in a detention order made under s. 3(2) when it has been superseded by one under s. 6(1) is not a relevant matter for consideration. In this regard The *Law of Habeas Corpus* (2nd Ed) by RJ Sharpe says at p. 179:
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> > *It has been held consistently that the relevant time at which the detention of the prisoner must be justified is the time at which the court considers the return to the writ. This rule means that nothing which has happened before the present cause of detention took effect will be relevant to the issue before the court, unless by reason of some special consideration arising from the particular proceedings.*

And at p. 186:

> On the present state of the law, in almost every instance, the relevant time at which the detention is to be justified is the time at which the court considers the case. *Prior illegality will not be relevant unless by reason of some special rule derived from the particular nature of the proceedings involved.*
>
> *Therefore a prior illegality which has ceased cannot be the subject matter of inquiry*. That would also be the conclusion in the case of a detention order made under s. 8(1) of the Internal Security Act 1960 and s. 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 subsequent to an arrest and detention made under both the statutes. It is perhaps appropriate to refer to *Kerajaan Malaysia & Ors v. Nasharuddin Nasir* [2004] 1 CLJ 81 where it was held that an order of detention made under s 8(1) of the Internal Security Act 1960 is not tainted by an illegality or irregularity in the s. 73 detention. However, the conclusion was reached not on the rationale as discussed in this judgment but on the principles enunciated in *Karam Singh v. Menteri Hal Ehwal Dalam Negeri, Malaysia* [1969] 2 MLJ 129; [1969] 1 LNS 65. Such an approach would leave unanswered the effect of procedural irregularities in an earlier detention which has been superseded by another detention order. Be that as it may, that case made it clear that a court has no jurisdiction to hear a writ filed against the police for irregularities in a detention order under s. 73(1) of the Internal Security Act 1960 when it had been superseded by one under s. 8(1) thereby bringing into sharp focus the propriety of the judgment of this court in *Mohamed Ezam Mohd Noor v. Ketua Polis Negara & Ors* [2002] 4 CLJ 309. The rationale underlying this judgment would, with respect, render the stand taken in the latter case unsustainable in law.

(emphasis added)

[29] It is thus clear that the court is not to look to the substance or merits of the decision made but it must confine itself to the issue of whether there has been a breach of any procedural requirements in the relevant legislation.

Findings And Decision

Applicant Denied A Fair And Effective Representation

[30] The reason the applicant and his counsel were requested to leave the meeting room was sufficiently explained in the affidavit of Mohd Yusoff bin Kamarudin affirmed on 17 April 2017 in his capacity as the Secretary to the Advisory Board.

[31] In the relevant paragraph in his affidavit, the said secretary stated that after the applicant and his counsel had orally submitted their representations, the Board instructed that a police officer "Pegawai Pengendali Polis" present the facts of the case which involved making reference to several written statements of certain witnesses.

[32] The affidavit also contained a statement that the Board felt that allowing the applicant and his counsel to remain would have prejudiced national security. The Board also took into account the safety aspects of the witnesses and the informants.

[33] The Board also took the view that there would be no prejudice to the applicant's rights in requesting that the applicant and his counsel leave because they were requested to leave after being afforded the opportunity to submit their representations.

[34] The relevant section related to the necessity to plead withholding of information in the national interest is contained in s. 14 of the Act which reads:

> 14. Disclosure of information
>
> Nothing in this Part or in any rules or regulations made thereunder shall require the Minister or any member of an Advisory Board or any Inquiry Officer or any public servant to disclose facts or to produce documents which he considers to be against the national interest to disclose or produce.

[35] A similar prohibition is enshrined in sub-art. (3) to art. 151 of the Federal Constitution which reads:

> 151. Restrictions on preventive detention
>
> (3) This Article does not require any authority to disclose facts whose disclosure would in its opinion be against the national interest.

[36] With regard to the specific procedure to be adopted in such situations, r. 10 of the Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure Rules) 1987 reads:

> Procedure where no express provision
>
> 10.(1) Subject to the provisions of the Act and these Rules, where any matter is not expressly provided for by these Rules, the Board may regulate its own procedure.
>
> (2) In particular, but without prejudice to the generality of paragraph (1), the Board may, having regard to considerations of security, in its discretion determine:
>
> (a) whether the evidence of any witness should be heard in the presence of a detained person or his representative or both;
>
> (b) whether any police officer should be required to appear before the Board in the presence of a detained person or his representative, or both; and
>
> (c) whether any document or other information should be made available or disclosed to a detained person or his representative, or both.

[37] There is therefore no specific procedure to be followed and the Board is at liberty to employ whatever procedure it thinks fit depending on the circumstances.

[38] It is also noteworthy to observe that the said Rules grant a discretion to the Board to determine that certain procedures be adopted in the interests of security.

[39] Subparagraph (a) in particular relates to whether the evidence of any witness should be heard in the presence of a detained person or his representative while sub-para. (c) relates to whether any document or other information should be made available or disclosed to a detained person or his representative.

[40] The said Rules therefore cover the very situation the applicant complains about.

[41] In relation to matters affecting national security, the observations made in the case of *PP v. Karpal Singh Ram Singh & Another Case* [1988] [1988] 2 CLJ 587; 1 CLJ (Rep) 249 are particularly instructive as follows:

> As to his other grounds for granting the order of *habeas corpus* they can be answered by going back to first principles. Since *The Zamora* [1916] 2 AC 77 Courts have come to accept that the best judge of what national security is the authority which has the charge of security ie, the government. Lord Parker said in that case:
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> > *Those who are responsible for the national security must be the sole judges of what the national security requires. It would be obviously undesirable that such matters should be made the subject of evidence in a Court of law or otherwise discussed in public.*
>
> (emphasis added)

[42] The sentiments expressed in the above passage clearly indicate that the issue of whether or not a matter is subject to national security is best left to the subjective discretion of the authority claiming such protection.

[43] The very wordings of s. 14 of the Act and art. 151(3) of the Federal Constitution itself import a subjective element of the deciding authority in deciding such matters.

[44] Furthermore, the applicant who was represented by not one but two able counsel had been given ample opportunity and latitude to submit orally when making representations.

[45] Counsel for the applicant was also allowed the further latitude by the Board of calling Police Inspector Syazana Syarliza binti Abdul Ghani as a witness during the hearing of the representation.

[46] I therefore find no merit in the applicant's complaint in respect of this ground.

Infringement Of s. 9(1) Of The Act And r. 3(1) Of The Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987

[47] In light of the fact that the two issues above are interrelated, it is convenient to consider them together. The applicant has raised the issue that at the time of his detention and statement of facts were served on him, he was not given any explanation nor were the facts interpreted to him in either Mandarin or the Foo Chow dialect which he understood.

[48] He thus alleged infringement of s. 9 of the Act which insofar as is material reads:

9. Representations against detention order

(1) A copy of every order made by the Minister under subsection 6(1) shall as soon as may be after the making thereof be served on the person to whom it relates, and every such person shall be entitled to make representations to an Advisory Board.

(2) For the purpose of enabling a person to make representations under subsection (1) he shall, at the time of the service on him of the order:

(a) be informed of his right to make representations to an Advisory Board under subsection (1) and

(b) be furnished by the Minister with a statement in writing:

(i) of the grounds on which the order is made;

(ii) of the allegations of fact on which the order is based; and

(iii) of such other particulars, if any, he may in the opinion of the Minister reasonably require in order to make his representations against the order to the Advisory Board.

[49] Rule 3(1) of the Rules reads:

Procedure for making representations

3.(1) When any person is served with a detention order, the police officer serving the detention order shall at the same time-

(a) inform that person of his right to make representations against the detention, order; and

(b) provide him with three copies of Form I prescribed in the Schedule and obtain from him an acknowledgement of the receipt thereof.

[50] The applicant submitted that if he had understood the contents if they had been interpreted to him as it should, he would not have written the words "tidak faham" or that he did not understand, in Chinese characters at the portion where he placed his signature on the order.

[51] With regard to the third issue, the applicant contended that when the Borang I was served on him, the contents were also not interpreted to him in Mandarin or in the Foo Chow dialect which he understood.

[52] He again submitted that if he had truly understood the contents, he would not have written the words "tidak faham" or that he did not understand in Chinese characters in the said Borang I.

[53] The applicant also alleged that the NRIC number in the Borang I was not his although the name was the same.

[54] He therefore alleged infringement of r. 3(1) of the Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987.

[55] The issues raised by the applicant relate to his right to make representations. These allegations are sufficiently answered in the affidavits of Police Inspector Syazana Syarliza binti Abdul Ghani affirmed on 7 April 2017 and 12 May 2017 respectively, who was tasked with the responsibility of serving the order (DO) and the Borang I on the applicant.

[56] She stated that she had on 24 June 2016 at 6pm at the lockup at Shah Alam served the DO, the statement of facts and the Borang I on the applicant.

[57] The said Syazana Syarliza binti Abdul Ghani also stated in her affidavit that after she ascertained that the applicant had required a Mandarin interpreter, one was provided in the person of Police Superintendent Jodie Yap Siew Wen who duly informed the applicant of his right to make representation to the Board and also to engage counsel to represent him.

[58] The affidavit of the said Jodie Yap Siew Wen affirmed on 7 April 2017 also explained in detail that the interpretation was carried out in Mandarin and the applicant then without any form of duress or coercion placed his signature acknowledging his receipt and understanding of the contents of the order, the statement of facts, grounds and the Borang I respectively.

[59] Further to this, exh. "MK1" to the affidavit of YB Dato' Masir Anak Kujat affirmed on 6 April 2017 contains a duly signed acknowledgement from the applicant that he received all documents mentioned in (a) to (c) on 24 June 2016 and understood their contents as well as his right to make representations against the order.

[60] The statements of both Syazana Syarliza binti Abdul Ghani and Jodie Yap Siew Wen are also supported by the affidavit affirmed on 14 April 2017 of Azman bin Mohd Ali who is the Director of Prisons and the Officer in Charge of the Simpang Renggam Rehabilitation Centre which stated that the facts relating to the order, the reasons and the statement of facts upon which the order was made, the right to make representations under r. 3(3) of the Rules, right to counsel and to call witnesses were duly explained to the applicant.

[61] The said affidavit of Azman bin Mohd Ali also stated that the applicant understood what was explained and himself filled in the Borang I and handed it to the said Azman bin Mohd Ali who on the very same day handed over the said Borang I to the Board.

[62] I was therefore satisfied that there were no breach of the section and Rules as alleged and I find no merit in the allegations advanced by the applicant in that regard.

[63] With regard to the issue that the NRIC number in the Borang I is not the NRIC number of the applicant, a reference to exh. "MY1" to the affidavit affirmed on 17 April 2017 of Mohd Yusof bin Kamarudin, the Secretary of the Board and the affidavit of the applicant will reveal that the NRIC number of the applicant is the same.

[64] Learned counsel for the applicant also raised the issue of the writing in Chinese characters at the signature portion at p. 2 of the order that stated the words "tidak faham" or that he did not understand and that this was confirmed by a Chinese interpreter.

[65] It is quite evident that contrary to the contention of learned counsel for the applicant, exh. "A1" to the affidavit of Azman bin Mohd Ali affirmed on 14 April 2017 is an annexure to Borang I containing a note in the applicant's own handwriting containing his representation as follows "Saya tak mengakui dan dibebaskan atau dikenakan sekatan daerah (P.C.O). Sekian terima kasih."

[66] This amply proves that the applicant is well conversant with the Bahasa Malaysia language and can both understand as well as write in Bahasa Malaysia. Furthermore, from the NRIC of the applicant, he was born in 1974 and therefore belongs to the generation who most likely received their medium of instruction while in school in the national language.

[67] In addition, the applicant was as alluded to earlier, represented and had the benefit of two learned counsel who were present during the representation proceedings and had exercised their right to call a witness. Therefore any doubts the applicant may have had would have been clarified and explained to him by counsel.

[68] Under all the circumstances therefore, I find no merit in the issues raised by the applicant.

Failure To Supply The Statement Of The Applicant Under Section 9(2)(b)(iii) Of The Act

[69] The applicant alleged breach of s. 9(2)(b)(iii) of the Act due to the failure to supply the applicant's recorded statement to him. Section 9 of the Act insofar as is relevant reads as follows:

> 9. Representations against detention order
>
> (1) A copy of every order made by the Minister under subsection 6(1) shall as soon as may be after the making thereof be served on the person to whom it relates, and every such person shall be entitled to make representations to an Advisory Board.

(2) For the purpose of enabling a person to make representations under subsection (1) he shall, at the time of the service on him of the order:

(a) be informed of his right to make representations to an Advisory Board under subsection (1) and

(b) be furnished by the Minister with a statement in writing:

(i) of the grounds on which the order is made;

(ii) of the allegations of fact on which the order is based; and

(iii) of such other particulars, if any, he may in the opinion of the Minister reasonably require in order to make his representations against the order to the Advisory Board.

[70] The respondent took the stand that the decision to refuse the furnishing of the said statement was because the document was a confidential document as well as one which disclosure would be against the national interest according to s. 14 of the Act.

[71] The said s. 14 reads:

14. Disclosure of information

Nothing in this Part or in any rules or regulations made thereunder shall require the Minister or any member of an Advisory Board or any Inquiry Officer or any public servant to disclose facts or to produce documents which he considers to be against the national interest to disclose or produce.

Furthermore art. 151(3) of the Federal Constitution states:

151. Restrictions on preventive detention

(1) ...

(2) ...

(3) This Article does not require any authority to disclose facts whose disclosure would in its opinion be against the national interest.

[72] Section 14 of the Act and art. 151(3) of the Federal Constitution therefore grant the respondent the right to claim immunity from disclosing documents which in their opinion or that of the Minister is against the national interest.

[73] As stated earlier, the above-mentioned section and clause in the article imports a subjective element in the exercise of the discretion involved. The cases cited by learned counsel for the applicant that decide otherwise are cases decided by the High Court and although they are entitled to the greatest of respect, I am not bound to follow them.

[74] In any event, I agree with the submission advanced by the respondents that the refusal to furnish the said statement did not prejudice the right of the applicant to make representations pursuant to the said Act.

[75] The reason is because as can be gleaned from the provisions of s. 9 of the Act, there are several documents which must be furnished and therefore the statement of the applicant not being one of those documents particularised or made mandatory for that purpose, cannot have a determining effect upon the effectiveness of the representations.

[76] In the premises, I dismiss this application for the writ of *habeas corpus.*